

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

In re:) Chapter 11
)
TWG CAPITAL, INC.,) Case No. 12-11019-BHL-11
)
Debtor.)

MOTION FOR AN ORDER AUTHORIZING THE DEBTOR TO PAY CERTAIN PRIORITY CLAIMS UNDER 11 U.S.C. § 507(a)(4)

TWG Capital, Inc. (the "Debtor"), the debtor and debtor-in-possession in the above-captioned Chapter 11 case (the "Chapter 11 Case"), files this motion (the "Motion") for entry of an order authorizing the Debtor to pay certain employees' priority claims under 11 U.S.C. § 507(a)(4) upon entry of the order granting the Motion. A proposed form of the order (the "Order") is attached hereto as Exhibit A. In support of the Motion, the Debtor states as follows:

Jurisdiction and Venue

1. On September 14, 2012 (the "Petition Date"), the Debtor filed with the United States Bankruptcy Court for the Southern District of Indiana, Indianapolis Division (the "Court"), its voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. as amended (the "Bankruptcy Code") commencing the Chapter 11 Case.
2. The Debtor continues to operate its business and manage its properties as a debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.
3. No trustee, examiner, or committee has been appointed in the Chapter 11 Case.

4. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court under 28 U.S.C. §§ 1408 and 1409.

5. The statutory bases for the relief sought herein are Sections 105(a), 363, 502(b)(7), and 507(a)(4) of the Bankruptcy Code.

Background

6. As more fully set forth in the Declaration of Mark P. Nondorf In Support Of Chapter 11 Petitions and First Day Motions [Doc. No. 4], the Debtor is a specialty finance company that serves the insurance industry. The Debtor was founded around the realization that insurance agents and agencies own predictable renewal commission rights on certain types of insurance policies ("ICRs") that generate significant cash flows over extended periods of time. These ICRs have not been recognized by traditional financing sources yet represent significant financial assets. The Debtor leverages its understanding of the insurance market and needs of market participants to provide a range of products and services based on the value of ICR assets. The Debtor's business is organized around three primary segments: Asset Originations, Asset Servicing, and Lending Business.

7. On the Petition Date, the Debtor filed its *First Day Motion of Debtor for Entry of an Order (A) Authorizing, But Not Requiring, Payment of Certain Pre-Petition (i) Wages, Salaries, and Other Compensation, (ii) Employee Medical and Similar Benefits, (iii) Reimbursable Employee Expenses, and (B) Authorizing and Directing Applicable Banks and Other Financial Institutions to Receive, Process, and Honor and Pay All Checks Presented for Payment and to Honor All Electronic Payments Requests Made by the Debtor Related to the Foregoing* [Doc. No. 6] (the "Wage Motion"), pursuant to which the Debtor sought authority to,

among others, pay unpaid compensation and vacation and other employee benefits that accrued pre-petition in the ordinary course of the Debtor's business. The Court entered its order approving the Wage Motion and granting the relief requested therein on September 20, 2012 [Doc. No. 35] (the "Wage Order").

8. On the Petition Date, the Debtor also filed a motion [Doc. No. 14] (the "Sale Motion") seeking entry of an order authorizing the sale of substantially all of the assets of the Debtor's estate to Carmel Funding, LLC ("Purchaser") or to the bidder submitting the highest or otherwise best bid. On November 9, 2012, the Court entered its order granting the Sale Motion and authorizing the sale to Purchaser [Doc. No. 142]. The sale to Purchaser closed on December 31, 2012, on which date the Employees' employment with the Debtor terminated.

9. The Debtor entered into pre-petition employment agreements (as such agreements may have been amended, the "TWG Employment Agreements") with Melanie S. Otto and Mark P. Nondorf (collectively, "Employees"). By the companion *Motion for an Order Nunc Pro Tunc to December 31, 2012 Authorizing the Rejection of Employment Agreements* filed contemporaneous with this Motion, the Debtor seeks authority to reject the TWG Employment Agreements as of December 31, 2012.

Relief Requested

10. The Debtor requests entry of an order authorizing the Debtor to pay the Employees' priority claims under 11 U.S.C. § 507(a)(4) upon entry of the Order approving this Motion.

Basis for Relief Requested

11. As of the Petition Date, the Employees were owed certain amounts for unpaid compensation, accrued and unused vacation time benefits, and other employee benefits

earned within 180 days of the Petition Date. The Employees may also be entitled to damages arising from the rejection of the TWG Employment Agreements. The Debtor believes that the Employees have mitigated certain of these rejection damages, but the Debtor is not yet in a position to estimate the total claim due to the Employees. Nevertheless, the Debtor is informed and believes that the Employees' total respective claims for wages, vacation, and other benefits earned within 180 days of the Petition Date greatly exceeds the \$11,725 priority cap set forth in 11 U.S.C. § 507(a)(4).

12. The Employees respectively are owed \$10,000 for unused vacation time that accrued pre-petition pursuant to the Debtor's ordinary course vacation policies and the TWG Employment Agreements (together, the "Priority Claim"). Pursuant to the Wage Order, each of the Employees has received post-petition payments for unpaid compensation as of the Petition Date in the amount of \$2,222.22.

13. Consistent with the terms of the Wage Order, the Debtor believes that it already has authority to pay the Priority Claim. However, out of an abundance of caution, the Debtor respectfully requests that the Court enter an order authorizing the Debtor to pay the Priority Claim to each Employee in the amount of \$9,502.78.

14. Payment of the Priority Claim will not cause the total post-petition payments received by the Employees on compensation earned within 180 days prior to the Petition Date to exceed the priority cap established under 11 U.S.C. § 507(a)(4). Further, payment of the Priority Claim is consistent with the relief granted by the Wage Order. The Debtor calculates that all administrative and priority claims will be fully paid. Accordingly, the Debtor's estate will not be harmed by payment of the Priority Claim consistent with the terms of the Wage Order.

15. Any additional rejection damages pursuant to 11 U.S.C. §§ 365(g) and 502(b)(7) and all other claims related to Employee Obligations (as defined in the Wage Motion) as to Employees will constitute general unsecured claims to be paid as allowed contemporaneous with distributions to all other general unsecured creditors in the Chapter 11 Case. Nothing in this Motion is intended or shall prejudice the Debtor's right to interpose an objection if warranted to the proofs of claim of Employees as may be filed respectively.

WHEREFORE, the Debtor requests that the Court enter an order authorizing the Debtor to pay the Priority Claim in the amount of \$9,502.78 owed to each Employee upon entry of the Order approving this Motion and granting all other just and proper relief.

Respectfully submitted,

FAEGRE BAKER DANIELS LLP

By: /s/ Kayla D. Britton

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CERTIFICATE OF SERVICE

I hereby certify that on January 15, 2013, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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I further certify that on January 15, 2013, a copy of the foregoing pleading will be mailed by first-class U.S. Mail, postage prepaid and properly addressed, to the following:

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